IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 98

Criminal Revision No 1 of 2025

Between

Abdul Ghufran bin Abdul Wahid

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Revision of proceedings — Accused person incapable of making defence — Determination of notional imprisonment term]

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Abdul Ghufran bin Abdul Wahid
v
Public Prosecutor

[2025] SGHC 98

General Division of the High Court — Criminal Revision No 1 of 2025
Sundaresh Menon CJ, Tay Yong Kwang JCA and Vincent Hoong J
17 April 2025

27 May 2025

Vincent Hoong J (delivering the grounds of decision of the court):

Introduction

1 The applicant, Mr Abdul Ghufran bin Abdul Wahid, was a 30-year-old man who was charged in the State Courts with offences of voluntarily causing hurt, outraging modesty and insulting modesty. The criminal proceedings against him were stayed after he was found to be incapable of making his defence by reason of a mental condition. The matter then came before the learned District Judge (the "DJ"), who declined to order his conditional release. She instead reported the case to the Minister, specifying in her report that the applicant would have been required to undergo a notional period of imprisonment (the "NIP") of nine months if convicted of all his alleged offences. The significance of the DJ's determination was that, under the applicable statutory regime set out in Part 13, Division 5 of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"), the NIP would form the

upper limit of any period of confinement subsequently ordered by the Minister. It was this determination which the applicant challenged by way of his application for criminal revision in HC/CR 1/2025.

2 We dismissed the application with brief oral remarks after hearing the young independent counsel and the parties on 17 April 2025. We now furnish the full grounds of our decision.

The proceedings below

3 On 28 December 2024, the applicant was charged in the State Courts with: (a) three offences of voluntarily causing hurt, punishable under s 323 of the Penal Code 1871 (2020 Rev Ed) (the "Penal Code"); (b) two offences of outraging a person's modesty, punishable under s 354(1) of the Penal Code; and (c) one charge of insulting a person's modesty, punishable under s 377BA of the Penal Code. There was no dispute during the proceedings below or before us that the applicant had committed the acts forming the subject of the charges, further details about which are set out in the table below:[1]

Charge	Offence provision	Details
1st charge	s 323 of the Penal Code	On 1 December 2024, the applicant bit the first victim, an 80-year-old male, on the left cheek, causing bleeding.
2nd charge	s 377BA of the Penal Code	On 1 December 2024, the applicant removed his pants and revealed his genitalia to the second victim, a 68-year-old male.

[1] Schedule of Offences dated 26 December 2024 (Record of Hearing ("ROH") at pp 2–3); MAC-909670-2024 to MAC-909675-2024 (ROH at pp 4–9); Respondent's Written Submissions dated 10 April 2025 ("RWS") at para 1.

3rd charge	s 354(1) of the Penal Code	On 1 December 2024, the applicant forcefully ground his groin area against the second victim's legs repeatedly.
4th charge	s 354(1) of the Penal Code	On 25 December 2024, the applicant forcefully hugged the third victim, an 87-year-old male, from the rear and humped him repeatedly.
5th charge	s 323 of the Penal Code	On 25 December 2024, the applicant bit the third victim in the area near to his right ear, causing bleeding.
6th charge	s 323 of the Penal Code	On 25 December 2024, the applicant hugged the fourth victim, a 60-year-old male, very hard and bit his forehead, causing bleeding.

4 The court was not satisfied that the applicant was capable of making his defence and ordered that he be remanded for observation in the Institute of Mental Health (the "IMH") under s 247(4)(*b*) of the CPC. The applicant was accordingly remanded in the IMH from 28 December 2024 to 10 January 2025 for a forensic psychiatric evaluation.

5 On 6 January 2025, Dr Soh Keng Chuan ("Dr Soh"), a consultant psychiatrist and designated medical practitioner with the IMH, issued a medical report (the "IMH Report") opining as follows:[2]

(a) The applicant had moderate intellectual disability. He was known to the IMH since 2002 and had first been diagnosed with

[2] IMH Report dated 6 January 2025 (ROH at pp 97–100).

intellectual disability when he was seven years old. He had scored between 37 and 45 in an IQ assessment conducted in 2012.

(b) The applicant was not of unsound mind. There was also no evidence to suggest that he was psychotic at the material time.

(c) Nonetheless, the applicant was unfit to plead. He could not comprehend the charges, enter a plea, follow court proceedings or instruct defence counsel. Given the nature of his condition, treatment was unlikely to effect any meaningful change in this regard.

(d) There was a contributory link between the applicant's mental condition at the material time and his alleged offences. His intellectual disability would have diminished his ability to appreciate the wrongfulness of his conduct and reduced his capacity to exercise self-control and restraint.

(e) The applicant had known behavioural problems. Specifically, he was known to have disturbed elderly men on wheelchairs in public by kissing them. He had previously been arrested for outrage of modesty in 2012 and for voluntarily causing hurt in 2015 and 2021. His victims were typically elderly men on wheelchairs. In 2021, he had attempted to kiss and hug the victim and later bit him on the ear.

(f) The applicant's risk of recidivism was moderate to high considering his antecedent behaviours and the nature of his condition. He was likely to target elderly male strangers in wheelchairs in an unprovoked manner and engage in unsolicited acts of a sexual and/or violent nature. It was unsafe for him to remain unsupervised in public.

Dr Soh also issued a certificate of the same date stating that the applicant, while of sound mind, was incapable of making his defence.[3]

6 On 27 January 2025, the court found in accordance with Dr Soh's opinion that the applicant was incapable of making his defence. The criminal proceedings were thereupon stayed as required under s 248(2) of the CPC.[4]

The DJ's decision

7 The matter came before the DJ on 4 and 11 February 2025. At this juncture, there were broadly two options open to her under s 249 of the CPC, which applied in virtue of the earlier finding that the applicant was incapable of making his defence (see s 249(1) of the CPC). First, as the applicant's offences were all bailable offences, the DJ could have ordered his release subject to certain conditions under s 249(2). Second, and in the alternative, she could have reported the case to the Minister under s 249(8)(*b*), specifying in the report the applicant's NIP as required by s 249(9)(*a*).

8 The DJ declined to order the applicant's conditional release. This was principally on the basis that his risk of reoffending had been assessed as moderate to high in the IMH Report. In this connection, the DJ also acknowledged Dr Soh's assessment that treatment was unlikely to effect any meaningful change in the applicant's condition (*Public Prosecutor v Abdul Ghufran Bin Abdul Wahid* [2025] SGMC 14 ("GD") at [24] and [53]–[55]).

9 Having declined to order the applicant's conditional release, the DJ was obliged to determine his NIP for the purposes of her report to the Minister. She

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3 IMH DMP dated 6 January 2025 (Certificate by DMP) (ROH at p 101).

4 Notes of Evidence ("NEs") (27 January 2025) at p 3 lns 27–29 (ROH at p 16).

first considered the individual periods of imprisonment which would have been imposed on him for each of his offences. Having regard to the relevant sentencing frameworks and precedents, the DJ calibrated these as follows (GD at [56]–[84]):

Charge	Offence provision	Individual imprisonment period
1st charge	s 323 of the Penal Code	4 months
2nd charge	s 377BA of the Penal Code	3 days
3rd charge	s 354(1) of the Penal Code	5 months
4th charge	s 354(1) of the Penal Code	5 months
5th charge	s 323 of the Penal Code	4 months
6th charge	s 323 of the Penal Code	4 months

10 The DJ then considered which of these imprisonment terms would have been ordered to run consecutively. In her judgment, having regard to the totality of the applicant's offending and bearing in mind that the offences were committed on two different days against four distinct victims, the imprisonment terms for the 1st and 4th charges would have been ordered to run consecutively, thereby yielding a total imprisonment period of nine months (GD at [26] and [86]). The DJ did not make further adjustments to this total imprisonment period and the applicant's NIP was thus nine months.

11 The DJ then ordered that the applicant be remanded in the IMH under s 249(12) of the CPC pending the Minister's order.[5] The DJ reported the case to the Minister on 21 February 2025 (GD at [27]).

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5 NEs (11 February 2025) at p 5 lns 27–29 (ROH at p 39).

12 We make one broad observation at this juncture about the DJ's reasoning. In determining the NIP, the DJ was attentive to the contributory link between the applicant's mental condition and his commission of the offences. In her mind, the implications of this contributory link were as follows. On the one hand, specific deterrence was not engaged as a relevant consideration even though the applicant had committed the offences underlying the 4th to 6th charges while on bail in relation to the 1st to 3rd charges (GD at [58]). On the other hand, as the applicant continued to pose a considerable risk to vulnerable members of the public (GD at [59]), and as his parents were clearly limited in their ability to control his behaviour (GD at [60]–[64]), the need for prevention by way of incapacitation in the interest of public protection was of particular salience (GD at [58], [65], [70], [78] and [87]). Ultimately, as the following remarks show, this need for prevention was foremost in the DJ's mind and warranted a longer NIP (GD at [87]):

> In determining the notional imprisonment period as such, I was mindful that the [applicant's] intellectual disability had a contributory link to the offences, and that his risk of recidivism had been assessed by [Dr Soh] to be moderate-to-high and vulnerable victims, namely elderly males in wheelchairs, would be targeted in an unprovoked manner for unsolicited acts of a sexual and/or violent mature. Whilst I was sympathetic to his parents' desire that he be released as soon as possible, I was mindful that the objective of public protection can only be achieved if the [applicant] was incapacitated for a longer period of time. …

The young independent counsel's case

13 To assist us in arriving at our decision, we appointed Assistant Professor Yoong Joon Wei Aaron ("A/Prof Yoong") as young independent counsel to address us on the following questions:

> What approach should the Court take in determining the notional imprisonment period ('NIP') under s 249(10) of the

> Criminal Procedure Code 2010? Without limiting the generality of the question, please consider:
>
> > a. Does the Court's role in determining the NIP differ from the Court's role in sentencing? If so, how?
> >
> > b. Can and should the Court consider the offender's mental state at the time of the offence in determining the NIP?
> >
> > c. To what extent should considerations of prevention (or the incapacitation of the offender) feature in determining the NIP?
> >
> > d. To what extent should considerations of rehabilitation (or the treatment of the offender) feature in determining the NIP?

14 A/Prof Yoong took the following positions. He first submitted that the court's role in determining the NIP differs from its role in sentencing. According to him, in determining the NIP, the court performs the "distinct and specific function" of establishing the maximum period of confinement which the Minister may order.[6] Because of this, its role in determining the NIP differs from its role in sentencing in three ways:

> (a) First, while sentencing is solely within the court's purview, the determination of the NIP takes place in the context of a broader legislative scheme. It is ultimately for the Minister, when a case is reported to him, to decide whether and for how long the accused person is to be confined, subject only to the upper limit constituted by the NIP. The court's role in determining the NIP is therefore "facilitative" in nature and is intended to assist the Minister in making his decision.[7]

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6 Young Independent Counsel's Written Submissions dated 4 April 2025 ("YICWS") paras 24–25.

7 YICWS at paras 26–27.

(b) Second, in the sentencing process, the court is dealing with a person who has been found guilty and convicted of an offence. Conversely, when determining the NIP, the court is concerned with an accused person who is more relevantly seen as a mentally or physically disordered individual.[8]

(c) Third, a sentencing court will have all the established facts before it in determining the appropriate sentence. However, when determining the NIP, the court will likely have nothing more than the accused person's charges and antecedents.[9]

15 A/Prof Yoong further submitted that the court should not consider the accused person's mental state at the time of the offence when determining the NIP. His primary concern appeared to be that the court, with the limited evidence before it, would otherwise be unduly reliant on any medical reports pertaining to the accused person's mental state. In support of this position, A/Prof Yoong referred to the approach adopted in several Australian jurisdictions.[10]

16 Finally, A/Prof Yoong submitted that rehabilitation should be the dominant consideration, with prevention only secondarily relevant, in the determination of the NIP. He further argued that retribution and deterrence should carry little to no weight.[11]

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8 YICWS at paras 28–29.

9 YICWS at paras 30–35.

10 YICWS at paras 37–47.

11 YICWS at paras 48–71.

The parties' cases

17 The parties agreed with A/Prof Yoong that the court's role in determining the NIP differs from its role in sentencing. The applicant endorsed the differences identified by A/Prof Yoong.[12] The Prosecution, without disagreeing with A/Prof Yoong, summarised the differences in terms of the purpose, basis, effect and appealability of the NIP. According to the Prosecution, the NIP: (a) is not punitive in its purpose;[13] (b) is based on an assumed rather than actual conviction;[14] (c) only represents the upper limit of the period of confinement which the Minister may order and does not result in a defined and determinate period of incarceration;[15] and (d) is not susceptible to an appeal.[16]

18 However, contrary to A/Prof Yoong, both parties were on common ground that the court should take into consideration an accused person's mental state at the time of the offence when determining the NIP. They argued that, as this mental state would have been relevant had the accused person been convicted and sentenced, it would be artificial to exclude it from consideration in determining the NIP. Importantly, where the accused person's mental state had the effect of diminishing his culpability for the offences, this exclusion would be prejudicial to him. Further, unlike the applicable statutory provisions in the Australian jurisdictions to which A/Prof Yoong referred, the CPC did not expressly require any such exclusion.[17]

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12 Applicant's Written Submissions dated 10 April 2025 ("AWS") at para 15.

13 RWS at paras 45–49.

14 RWS at para 53.

15 RWS at paras 50–52.

16 RWS at para 8(a).

17 AWS at paras 18–31; RWS at paras 70 and 73–74.

19 Both parties also shared A/Prof Yoong's views on the relevance of rehabilitation, as well as the general irrelevance of deterrence and retribution, in determining the NIP.[18] However, as against A/Prof Yoong, the applicant submitted that prevention should not be relevant even as a secondary consideration. According to him, this was because an accused person who remains unsafe for discharge at the end of his period of confinement can be further detained under the Mental Health (Care and Treatment) Act 2008 (2020 Rev Ed) (the "MHCTA").[19] Conversely, the Prosecution agreed with A/Prof Yoong that prevention should be a relevant consideration but disagreed that it should invariably be regarded as secondary in its importance to rehabilitation. In the Prosecution's submission, the relative weight to be accorded to rehabilitation and prevention would turn ultimately on the facts. Where, for example, the accused person's mental condition was not susceptible to treatment and he was assessed to pose a risk to others, prevention would assume primacy over rehabilitation.[20]

20 Drawing together its positions on the above issues, the Prosecution proposed the following four-step framework according to which the NIP should be determined:

(a) First, the court should assume that the accused person committed and has been convicted of every offence with which he is charged.[21]

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18 AWS at paras 18 and 32; RWS at paras 62–63 and 66.

19 AWS at paras 16–17 and 33–42.

20 RWS at para 80.

21 RWS at para 55.

(b) Second, the court should identify and weigh the applicable considerations, such as rehabilitation and prevention.[22]

(c) Third, the court should determine the individual periods of imprisonment that the accused person would have been required to undergo for each of his offences.[23]

(d) Fourth, the court should consider the possible combinations of consecutive sentences and concurrent sentences. It should then ensure the resulting total period of imprisonment is in the final analysis just and appropriate.[24]

21 In relation to the present case, the applicant did not challenge the DJ's refusal to order his conditional release. He took issue only with her determination of the NIP, which, he contended, should have been only one and a half months instead of nine months.[25] The applicant alleged that the DJ erred by taking account of two irrelevant factors in determining the NIP: (a) the principle of prevention; (b) the estimated length of time required for the applicant's recovery. The DJ further erred by doubting the ability of the applicant's parents to adequately supervise him. In the circumstances, the applicant submitted that the threshold for the exercise of the High Court's revisionary jurisdiction had been crossed.[26]

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22 RWS at paras 61–67.

23 RWS at para 68–74.

24 RWS at paras 75–80.

25 AWS at para 7.

26 AWS at paras 10–11; Affidavit of Suzana Binte Masaid dated 4 March 2025 at para 16.

22 As against this, the Prosecution submitted that the DJ's determination of the NIP was just and appropriate. It argued that prevention was indeed the dominant consideration in the present case.[27] Further, and contrary to the applicant's characterisation, the DJ did not take into account the likely amount of time required for his treatment in calibrating the NIP.[28] Her conclusion that the applicant's parents were limited in their ability to supervise him was also amply supported by the evidence.[29] In the premises, the DJ's determination of the NIP could not be said to be erroneous in any way, let alone so palpably wrong as to warrant the exercise of the High Court's revisionary jurisdiction.[30]

Issues to be determined

23 We begin by broadly introducing the statutory regime applicable to accused persons who are suspected or found to be incapable of making their defence, to which we refer as the "fitness to plead regime". Having done so, we discuss the approach to be taken by the court in determining the NIP. Finally, we turn to the present case and explain why we dismissed the application for criminal revision.

Overview of the fitness to plead regime

24 The fitness to plead regime is found in Part 13, Division 5 of the CPC, which also deals with accused persons who are acquitted of an offence by reason of unsoundness of mind. The fitness to plead regime was substantially amended by the Criminal Justice Reform Act 2018 (Act 19 of 2018) (the "CJRA"), which,

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27 RWS at paras 92–94.

28 RWS at para 101.

29 RWS at para 103.

30 RWS at paras 90 and 106.

among other things, first introduced the concept of the NIP. Prior to the CJRA, an order of confinement made by the Minister in a case reported to him was not subject to any upper limit.

25 During the Second Reading of the Criminal Justice Reform Bill (Bill No 14/2018) (the "CJRB"), then Senior Minister of State for Law Ms Indranee Rajah ("Ms Rajah") explained the rationale for the amendments in the following terms (Singapore Parl Debates; Vol 94, Sitting No 69 [19 March 2018] (Indranee Rajah, Senior Minister of State for Law)):

> Next, enhancing and rationalising the fitness to plead/unsoundness of mind regime.
>
> The law provides for special procedures to deal with two categories of accused persons with special needs. First, those who are 'unfit to plead', in other words, not capable of making their defence at the time of trial; and second, those who are acquitted on the basis that they were of unsound mind at the time that they committed the offences.
>
> The procedures balance the need to ensure that such persons are not a danger to themselves or others and the need to respect the fact that such persons have not been convicted of any offence. They are also designed to provide such persons with the best possible opportunities of recovery, in a controlled environment.
>
> The Bills make quite significant amendments to this regime, to allow the Courts and medical professionals to play a more involved role in determining the most appropriate action to take in respect of such persons. For example, such persons may be released with certain conditions where they are not assessed to be a danger to themselves or others.
>
> There is a risk in doing this; we have seen instances in other countries where release has led to harm. For example, it was reported in 2016 that a man in New Zealand who killed a person but was acquitted on the basis of insanity was released after a few years in detention and, then, had gone on to commit another violent attack in a train station.
>
> So, there are these considerations, but it is the right thing to do where doing so would help the accused person's recovery. The alternative would be to confine them for extended periods of time, which may not be necessary or helpful.

> Due weight will be given to medical opinion, and the necessary conditions imposed, to minimise the risk of re-offending as much as possible.
>
> A maximum duration will be set for confinements pursuant to the Minister's orders.
>
> The Courts and medical professionals will be given a greater role in supervising such persons and determining what measures to take with respect to such accused persons.
>
> An accused person released under these CPC provisions may still, however, be subject to detention under the Mental Health (Care and Treatment) Act if he or she is assessed to remain a danger to himself or herself, or to others.

We return to the significance of these remarks below when discussing the approach to be taken by the court in determining the NIP.

26 Although we are concerned throughout these grounds with the fitness to plead regime as it was in force at the time of the proceedings below, we should note that this regime was the subject of further amendments in the Criminal Procedure (Miscellaneous Amendments) Act 2024 (Act 5 of 2024) taking effect from 14 February 2025. Nonetheless, these further amendments do not appear to bear on the substance of the regime and we consider that, subject to suitable modifications, our observations will largely continue to apply.

27 In our view, it is helpful to understand the fitness to plead regime as broadly comprising the following four stages:

(a) First, the court investigates whether the accused person is capable of making his defence.

(b) Second, having regard to the medical evidence received in the course of its investigation, the court finds whether the accused person is capable of making his defence.

(c) Third, where it has been found that the accused person is incapable of making his defence, the court orders his conditional release or reports the case to the Minister.

(d) Fourth, where the case has been reported to the Minister, the Minister orders the conditional release or the confinement of the accused person.

Stage 1: The court investigates whether the accused person is capable of making his defence

28 The first stage involves an investigation by the court into the accused person's ability to make his defence in situations where it is unclear that he is capable of doing so.

29 In the first place, where the court has reason to suspect that the accused person is incapable of making his defence, it is required under s 247(1) of the CPC to investigate whether he is in fact so incapable. Section 247(3) further provides that, for the purposes of this investigation, the court may receive a written certificate or take oral evidence from a medical practitioner.

30 Sections 247(1) and (3) provide:

> (1) When a court, which is holding or about to hold any inquiry, trial or other proceeding, has reason to suspect that the accused, by reason of unsoundness of mind or any physical or mental condition, is incapable of making the accused's defence, the court must in the first instance investigate whether the accused is in fact so incapable.
>
> …
>
> (3) For the purposes of the investigation, the court may —
>
> > (*a*) receive as evidence a certificate in writing signed by a medical practitioner stating that, in the opinion of the medical practitioner, the accused —

> (i) is incapable of making the accused's defence by reason of unsoundness of mind or any physical or mental condition; or
>
> (ii) is a proper person to be detained for observation and treatment in a psychiatric institution; or
>
> (*b*) if the court sees fit, take oral evidence from a medical practitioner on the accused's state of mind or physical or mental condition.

31 Further, where the court is not satisfied that the accused person is capable of making his defence, it is required under s 247(4) of the CPC to postpone the proceeding and order that the accused person be remanded for observation in a psychiatric institution. During the period of remand, a designated medical practitioner is required under s 247(5) to keep the accused person under observation and provide any necessary treatment. Before the expiry of this period, the designated medical practitioner is also required under s 247(6)(*a*) to certify in writing his opinion on certain specified matters, including the accused person's ability to make his defence.

32 Sections 247(4)–247(6)(*a*) provide:

> (4) If the court, on its own motion or on the application of the Public Prosecutor, is not satisfied that the accused is capable of making the accused's defence, the court must —
>
> (*a*) postpone the inquiry, trial or other proceeding; and
>
> (*b*) order that the accused be remanded for observation in a psychiatric institution for a period not exceeding one month.
>
> (5) During the period of the accused's remand (including any extension under subsection (8) of that period), a designated medical practitioner must —
>
> (*a*) keep the accused under observation; and
>
> (*b*) provide any necessary treatment.

> (6) Before the expiry of the period of the accused's remand (including any extension under subsection (8) of that period) —
>
> > (*a*) the designated medical practitioner must certify in writing to the court the designated medical practitioner's opinion on the following matters:
> >
> > > (i) the accused's state of mind or physical or mental condition and, consequently, the accused's ability to make the accused's defence;
> > >
> > > (ii) whether there is any risk that the accused, if released, may injure himself or any other person;
> > >
> > > (iii) if there is any such risk —
> > >
> > > > (A) the extent of that risk;
> > > >
> > > > (B) the conditions (if any) that may be imposed to minimise that risk; and
> > > >
> > > > (C) the extent to which each such condition (if any) will minimise that risk; or
>
> …

Stage 2: The court finds whether the accused person is capable of making his defence

33 The second stage involves a finding by the court as to whether the accused person is capable of making his defence. The starting point for the court's determination is the certified opinion of the designated medical practitioner. Thus, where the designated medical practitioner's view is that the accused person is capable of making his defence, s 248(1) of the CPC requires the court, unless it is satisfied to the contrary, to continue with the proceeding. Conversely, where the designated medical practitioner's view is that the accused person is incapable of making his defence, s 248(2) requires the court, unless it is satisfied to the contrary, to find accordingly and stay the proceeding.

34 Sections 248(1)–(2) provide:

> (1) If the designated medical practitioner certifies that the accused is capable of making his or her defence, the court must, unless satisfied to the contrary, proceed with the inquiry or trial or other proceeding.
>
> (2) If the designated medical practitioner certifies that the accused is, by reason of unsoundness of mind or any physical or mental condition, incapable of making his or her defence, the court must, unless satisfied to the contrary, find accordingly, and thereupon the inquiry or trial or other proceeding must be stayed but if the court is satisfied that the accused is capable of making his or her defence, the court must proceed with the inquiry or trial or other proceeding, as the case may be.

Stage 3: The court orders the accused person's conditional release or reports the case to the Minister

35 The third stage applies upon a finding by the court at the second stage that the the accused person is incapable of making his defence. Section 249 of the CPC sharply distinguishes at this juncture between bailable and non-bailable offences. If the accused person's alleged offences are all bailable offences, the court has the discretion either to order his conditional release under s 249(2) or to report the case to the Minister under s 249(8)(*b*). However, if the accused person is charged with one or more non-bailable offences, the court has no discretion to order his conditional release and is obliged under s 249(8)(*a*) to report the case to the Minister.

36 Sections 249(2)–(4) and 249(8) provide:

> (2) If every offence that the accused is charged with is bailable, the court may order the release of the accused on the following conditions:
>
> > (*a*) the accused will be properly taken care of;
> >
> > (*b*) the accused will be prevented from injuring himself or any other person;
> >
> > (*c*) the accused will, when required, appear in court or before any officer that the court appoints for that purpose;

(*d*) any other conditions that the court may impose in any particular case.

(3) An order under subsection (2) may (but need not) specify —

(*a*) for the purposes of subsection (2)(*a*), a person by whom the accused will be properly taken care of; or

(*b*) for the purposes of subsection (2)(*b*), a person by whom the accused will be prevented from injuring himself or any other person.

(4) For the purposes of subsection (2)(*d*), the conditions that the court may impose in any particular case, when the court makes an order under subsection (2), include the following conditions:

(*a*) the accused must reside at a place, such as a nursing home for which there is in force a licence issued under the Private Hospitals and Medical Clinics Act 1980 or in respect of which a licence is granted under the Healthcare Services Act 2020, that is specified in the order;

(*b*) the accused must present himself for any medical treatment that is specified in the order;

(*c*) the accused must take any medication that is specified in the order;

(*d*) the accused, or any other person or persons specified in the order, or 2 or more of them, must give sufficient security for compliance with the conditions of the order;

(*e*) a person specified in the order must supervise the accused's compliance with any conditions of the order that are imposed on the accused.

…

(8) The court must report a case to the Minister if —

(*a*) any offence that the accused is charged with is not bailable;

(*b*) every offence that the accused is charged with is bailable, but the court does not order under subsection (2) the release of the accused; or

…

37 Where the court reports the case to the Minister, it is required under s 249(9)(*a*) of the CPC to specify the accused person's NIP in its report. This applies irrespective of whether the alleged offences are bailable or non-bailable offences. Section 249(10)(*a*) provides three points of guidance on the manner in which the NIP is to be determined:

(a) First, the court should assume that the accused person committed and has been convicted of every offence with which he is charged (ss 249(10)(*a*) and 249(10)(*a*)(ii) of the CPC).

(b) Second, the court should have regard to the possible combinations of consecutive sentences and concurrent sentences that might have been imposed on the accused person (s 249(10)(*a*)(i) of the CPC).

(c) Third, the court should have regard to the need for the total period of imprisonment to be just and appropriate, taking into account the totality of the accused person's criminal conduct (s 249(10)(*a*)(ii) of the CPC).

38 Sections 249(9)(*a*) and 249(10) provide:

> (9) Where the court reports a case to the Minister under subsection (8), the following apply:
>
> > (*a*) the court must specify in the report the notional period of imprisonment that the accused would have been required to undergo, if the accused was convicted of every offence that the accused is charged with (called in this section the notional imprisonment period);
> >
> > …
>
> (10) For the purposes of subsection (9), the notional imprisonment period is to be determined by the court in the following manner:

> (*a*) the notional imprisonment period is the total period of imprisonment that the court making the determination would have required the accused to undergo, if the accused had been convicted of, and sentenced to imprisonment (including imprisonment in default of payment of a fine) for, every offence that the accused is charged with, having regard to —
>
> > (i) the possible combinations of consecutive sentences and concurrent sentences that might be imposed on the accused if the accused had been convicted of those offences; and
> >
> > (ii) the need for the total period of imprisonment to be just and appropriate, taking into account the totality of the criminal conduct of the accused, after assuming that the accused committed every offence that the accused is charged with;
>
> (*b*) the court may, in its discretion, hear any evidence that it is satisfied will assist it in making its determination.

Stage 4: The Minister orders the accused person's conditional release or his confinement

39 The fourth stage applies only in situations where the court has reported the case to the Minister at the third stage. At this stage, leaving aside cases where the accused person is charged with a "capital or life imprisonment offence" within the meaning of s 249(21) of the CPC, the Minister has a choice between the making of two orders:

(a) First, under s 249(9)(*c*)(i), the Minister may order the accused person's confinement in a psychiatric institution, a prison or any other suitable place of safe custody. This is subject to s 249(9)(*c*)(i)(A), which states that the period of confinement must not exceed the NIP.

(b) Second, under s 249(9)(*c*)(ii), the Minister may order the accused person's conditional release. However, s 249(13) qualifies that this option is only available if: (i) a designated medical practitioner has

> certified his opinion that there is no risk that the accused person, if released, may injure himself or any other person; or (ii) the Minister is satisfied, after taking into account the extent of any such risk, that it is not against the public interest to order the conditional release of the accused person.

Section s 249(9)(*d*) further provides that the court must give effect to the Minister's order, whether this be an order for the accused person's confinement or for his conditional release.

40 The relevant subsections of s 249 of the CPC state:

> (9) Where the court reports a case to the Minister under subsection (8), the following apply:
>
> …
>
> (*b*) if any offence that the accused is charged with is a capital or life imprisonment offence, the Minister must make an order that the accused be confined in a psychiatric institution, a prison or any other suitable place of safe custody specified in the Minister's order, for a period that may extend to the term of the accused's natural life;
>
> (*c*) if no offence that the accused is charged with is a capital or life imprisonment offence, the Minister must make either of the following orders:
>
> (i) an order that the accused be confined in a psychiatric institution, a prison or any other suitable place of safe custody specified in the Minister's order, for a period in relation to which the following conditions are satisfied:
>
> (A) the period of confinement under the Minister's order must not exceed the notional imprisonment period;
>
> (B) the total period of confinement under the Minister's order, and under every earlier order (if any) made by the Minister under paragraph (*b*) or sub-paragraph (i) in respect of any

offence that the accused is charged with, does not exceed the notional imprisonment period;

(ii) an order that the accused be released on the following conditions:

(A) the accused will be properly taken care of;

(B) the accused will be prevented from injuring himself or any other person;

(C) the accused will, when required, appear in court or before any officer that the court appoints for that purpose;

(D) any other conditions that the Minister may impose in any particular case;

(*d*) the court must give effect to the Minister's order under paragraph (*b*) or (*c*)(i) or (ii).

…

(13) The Minister must not order under subsection (9)(*c*)(ii) that the accused be released unless —

(*a*) a designated medical practitioner has certified under section 247(6)(*a*) the designated medical practitioner's opinion that there is no risk that the accused, if released, may injure himself or any other person; or

(*b*) after taking into account the extent of any risk that the accused, if released, may injure himself or any other person, the Minister is satisfied that it is not against the public interest to order the release of the accused on the conditions mentioned in subsection (9)(*c*)(ii)(A) and (B).

(14) An order of the Minister under subsection (9)(*c*)(ii) may (but need not) specify —

(*a*) for the purposes of subsection (9)(*c*)(ii)(A), a person by whom the accused will be properly taken care of; or

(*b*) for the purposes of subsection (9)(*c*)(ii)(B), a person by whom the accused will be prevented from injuring himself or any other person.

> (15) For the purposes of subsection (9)(*c*)(ii)(D), the conditions that the Minister may impose in any particular case, when the Minister makes an order under subsection (9)(*c*)(ii), include the following conditions:
>
> (*a*) the accused must reside at a place, such as a nursing home for which there is in force a licence issued under the Private Hospitals and Medical Clinics Act 1980 or in respect of which a licence is granted under the Healthcare Services Act 2020, that is specified in the order;
>
> (*b*) the accused must present himself for any medical treatment that is specified in the order;
>
> (*c*) the accused must take any medication that is specified in the order;
>
> (*d*) the accused, or any other person or persons specified in the order, or 2 or more of them, must give sufficient security for compliance with the conditions of the order;
>
> (*e*) a person specified in the order must supervise the accused's compliance with any conditions of the order that are imposed on the accused;
>
> (*f*) the accused must be delivered to the care and custody of a person specified in the order.
>
> …
>
> (21) In this section, 'capital or life imprisonment offence' means an offence that —
>
> (*a*) is punishable with death or imprisonment for life; and
>
> (*b*) is not —
>
> (i) also punishable with an alternative punishment other than death or imprisonment for life; and
>
> (ii) to be tried before a District Court or a Magistrate's Court.

41 Finally, upon the expiry of any period of confinement ordered by the Minister, the accused person may be further detained at a psychiatric institution under the MHCTA if he remains unsuitable for release. This possibility was

expressly contemplated by Ms Rajah during the Second Reading of the CJRB (Singapore Parl Debates; Vol 94, Sitting No 69 [19 March 2018] (Indranee Rajah, Senior Minister of State for Law)):

> Dr Tan Wu Meng asked about what would happen if the maximum term of confinement under the CPC has been reached and the subject is still found to be unsafe for discharge as he or she remains a danger to himself or herself or others.
>
> He or she will be transited to the regime under the Mental Health (Care and Treatment) Act and will continue to be confined for treatment, usually at the IMH. It is just that the criminal charge element is removed. A person confined under the Mental Health (Care and Treatment) Act is periodically reviewed and assessed for his or her suitability for release.

42 Consistent with this, s 249(20)(*d*) of the CPC provides that an accused person may be dealt with under the MHCTA upon the expiry of his period of confinement. Section 249(20) provides:

> The following apply to an accused who is confined in a psychiatric institution, a prison, or any other suitable place of safe custody pursuant to an order of the Minister under subsection (9)(*b*) or (*c*)(i), when the period of confinement under the order expires:
>
> (*a*) the accused must be produced, as soon as practicable, before a court;
>
> (*b*) the period, beginning at the time the period of confinement under the order expires and ending at the time the accused is produced before the court, must not exceed 24 hours, exclusive of the time necessary for the journey from the place of confinement to the court;
>
> (*c*) the court may —
>
> (i) after due inquiry, send the accused to a designated medical practitioner at a psychiatric institution for treatment;
>
> (ii) remand the accused in custody in accordance with section 238; or
>
> (iii) release the accused on bail, on personal bond, or on bail and on personal bond, under section 92 or 93;

> (*d*) where paragraph (*c*)(i) applies, the accused may be dealt with in accordance with the provisions of the Mental Health (Care and Treatment) Act 2008.

The approach to be taken by the court in determining the NIP

43 We now discuss the approach to be taken by the court in determining the NIP. We first consider whether and how the court's role in determining the NIP differs from its role in sentencing. We then address the following issues of principle relating to the determination of the NIP: (a) whether the Prosecution is required to adduce evidence to establish the physical elements of the offence; (b) the relevance of considerations of prevention and rehabilitation; and (c) whether the court should consider the accused person's mental condition. Drawing together these threads, we then lay down a four-step framework by which the NIP should be determined.

Whether the court's role in determining the NIP differs from its role in sentencing

44 We agree generally with A/Prof Yoong and the parties that there are important differences between the court's role in determining the NIP and its role in sentencing. In our view, these differences include at least the following three.

45 First, an ordinary sentence is imposed on a convicted offender and serves at least in part to punish him (see *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 at [28]). Conversely, when determining the NIP, the court is dealing with an accused person who has not been convicted of any offence. This observation was made by Ms Rajah during the Second Reading of the CJRB (see [25] above). In our judgment, it necessarily follows that the NIP cannot be regarded as punitive in nature. Where an individual has

not been found guilty of any conduct deserving of criminal sanction, it is inappropriate to speak in terms of punishing him.

46 Second, a sentencing court will generally have been apprised of the relevant facts and evidence in the course of earlier trial or plead-guilty proceedings. The same cannot be said of a court determining the NIP. We note that s 249(10)(*b*) of the CPC empowers the court in appropriate situations to hear evidence. However, we consider that this power will ordinarily be exercised to verify discrete facts stated on the record where such verification is deemed necessary. Section 249(10)(*b*) does not appear to us to contemplate a proactive factual inquiry by the court into any and all factual issues with a possible bearing on the NIP. This explains why s 249(10)(*b*) is expressed in qualified terms. Instead of providing that such a factual inquiry is to be held by default whenever the court is determining the NIP, it states only that "the court *may*, *in its discretion*, hear any evidence *that it is satisfied will assist it in making its determination*" [emphasis added].

47 Third, the determination of an ordinary sentence is a matter solely for the court. For example, as the Prosecution observed, the imposition of a sentence of imprisonment results in a defined and determinate period of incarceration.[31] In comparison, the NIP only represents the maximum period of confinement which the Minister may order under the broader fitness to plead regime. It is ultimately for the Minister, in a case reported to him, to determine the appropriate order to be made. The Minister may decide to order a period of confinement shorter than the NIP or, indeed, to order the accused person's conditional release instead of his confinement. Given that this decision-making authority is ultimately vested in the Minister, we agree with A/Prof Yoong that

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[31] RWS at para 50.

the court's role in determining the NIP is appropriately described as facilitative in nature. When the court specifies the NIP in its report to the Minister, it provides its view on the likely period of imprisonment to which the accused person would have been sentenced had he been capable of making his defence and convicted of the offence. To this extent, the NIP may be loosely compared to an advisory opinion which is intended to assist the Minister in making his decision.

Whether the Prosecution is required to adduce evidence to establish the physical elements of the offence

48 During the hearing, we queried whether the Prosecution is required to adduce evidence to establish the physical elements or *actus reus* of the offence beyond a reasonable doubt. We accepted the Prosecution's position in reply that it is not required to do so and now explain our reasons.

49 As mentioned earlier, the NIP is to be determined on the hypothetical assumptions that the accused person committed and has been convicted of every offence with which he is charged (see [37(a)] above). In our view, these assumptions clearly relieve the Prosecution of its ordinary burden of establishing the elements of the offence. This conclusion is reinforced by the fact that, despite s 249(10)(*b*) of the CPC (see [46] above), the fitness to plead regime does not envisage the default holding of a factual inquiry for the court to satisfy itself that the physical elements of the offence are made out on the evidence. This may be usefully contrasted with the position where an accused person is acquitted of an offence by reason of unsoundness of mind. In this connection, s 251 of the CPC provides: "If an accused is acquitted by operation of section 84 of the Penal Code 1871, the finding must state specifically whether he or she committed the act or not." This presupposes the existence of a

"finding" by the court and, by logical implication, a prior factual inquiry conducted by it. In the absence of any provision for such a factual inquiry under the fitness to plead regime, it cannot have been intended that the Prosecution would be required to adduce evidence to establish the physical elements of the offence.

50 Nonetheless, the court must surely be satisfied that, on the face of the record, the physical elements of the offence are all made out. Put another way, although the Prosecution is not required to prove the facts stated on the record, the facts stated on the record must show that the physical elements of the offence are satisfied. These facts may include those stated in the charge, the objective evidence or an account or statement of facts prepared by the Prosecution (see [51] below). The intention is not to enable the court to make findings of fact but simply to satisfy itself that on the record the basic elements of the offence appear to be made out.

51 Bearing in mind the limited nature of the facts and evidence before the court, we also consider that the Prosecution should assist in the determination of the NIP by providing an account or statement of the relevant facts. This may be thought of in analogous terms to the Case for the Prosecution or the Prosecution's opening statement in the context of trial proceedings, which set out the key elements of the Prosecution's factual case against the accused person.

The relevance of considerations of prevention and rehabilitation

52 We now address the relevance of considerations of prevention and rehabilitation in the determination of the NIP. Throughout these grounds, we use "prevention" to refer compendiously to prevention by way of incapacitation

for the protection of the public. In certain cases, this may also encompass the protection of the accused person himself.

53 In our judgment, the primary consideration in determining the NIP should be that of prevention. This is borne out by the following features of the fitness to plead regime, which indicate a strong emphasis on prevention as a consideration:

(a) Where an accused person is remanded for observation in a psychiatric institution, the matters on which the designated medical practitioner is required to opine include the existence and extent of any risk that the accused person, if released, may injure himself or any other person (see ss 247(6)(*a*)(i)–(ii) of the CPC).

(b) The scope of the discretion vested in the court and the Minister to order the accused person's conditional release varies according to the severity of his alleged offence. This is significant because the severity of an offence may be thought, all else being equal, to correspond to the degree of risk which the offender poses to society. Thus, where the accused person is charged with one or more non-bailable offences, the court is precluded from ordering his conditional release and must report the case to the Minister (see s 249(8)(*a*) of the CPC). Further, where the accused person is charged with a "capital or life imprisonment offence", the Minister is precluded from ordering his conditional release and must order his confinement for a period that may extend to the term of his natural life (see s 249(9)(*b*) of the CPC).

(c) Before ordering an accused person's conditional release, the Minister is required specifically to apply his mind to the existence and extent of any risk that the accused person, if released, may injure himself

or any other person. The Minister may only order the accused person's conditional release if: (i) there is no such risk in the opinion of the designated medical practitioner; or (ii) the Minister is nonetheless satisfied that it is not against the public interest to order the accused person's conditional release (see s 249(13) of the CPC).

(d) Where the court or the Minister orders an accused person's conditional release, the specified conditions include the condition that he "will be prevented from injuring himself or any other person" (see ss 249(2)(*b*) and 249(9)(*c*)(ii)(B) of the CPC). The order of conditional release may be revoked if this condition is breached without reasonable excuse (see ss 249(7) and 249(18) of the CPC).

54 This emphasis on prevention is also consistent with Ms Rajah's recognition, during the Second Reading of the CJRB, of "the need to ensure that such persons are not a danger to themselves or others" (see [25] above).

55 We noted earlier that an accused may be further detained at a psychiatric institution under the MHCTA if he remains unsuitable for release upon the expiry of his period of confinement (see [41] above). Drawing upon this possibility of future detention, the applicant submitted that it was unnecessary for the court ever to have recourse to the consideration of prevention in determining the NIP. We rejected this submission. As a matter of principle, we failed to understand how the possibility of future detention, under an entirely separate statutory regime, could displace the relevance of prevention in the determination of the NIP. Indeed, future detention under the MHCTA is always a possibility whatever the length of the NIP determined by the court or the period of confinement ordered by the Minister. The court's task in determining the NIP, however, is simply to assess the likely period of imprisonment to which

the accused person would have been sentenced had he been capable of making his defence and convicted of the offence. In the circumstances, we agreed with the Prosecution's submission that the possibility of future detention under the MHCTA cannot have any logical bearing on the determination of the NIP.[32]

56 In contrast, we are of the view that rehabilitation is of limited relevance as a consideration in the determination of the NIP. This conclusion follows from the relatively modest nature of the court's role under the fitness to plead regime where the case is reported to the Minister. As explained earlier, it is ultimately for the Minister, in a case reported to him, to determine the appropriate order to be made in respect of the accused person (see [47] above). This being so, we do not think it is for the court to assess how best to further the accused person's prospects of treatment or recovery. Accordingly, the consideration of rehabilitation should not have any material bearing on its determination of the NIP. We acknowledge that, during the Second Reading of the CJRB, Ms Rajah described the relevant procedures as being "designed to provide such persons with the best possible opportunities of recovery, in a controlled environment" (see [25] above). However, Ms Rajah's remarks were directed at the fitness to plead regime as a whole and do not suggest, more particularly, that it is for the court in determining the NIP to seek to maximise the accused person's prospects of rehabilitation. Indeed, it could not be otherwise given the limited role that the court plays in this context.

Whether the court should consider the accused person's mental condition

57 We now discuss whether the court should consider the accused person's mental condition in determining the NIP.

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[32] RWS at para 102.

58 We begin with the position in the context of sentencing. The law is clear that "the existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process" (*Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [25]). In particular, it has been recognised that an offender's mental condition can have a "potentially paradoxical effect" on the sentence to be imposed (*Public Prosecutor v Soo Cheow Wee and another appeal* [2024] 3 SLR 972 ("*Soo Cheow Wee*") at [51]). On the one hand, the offender's mental condition may potentially be a mitigating consideration if it is causally connected to the offending behaviour and therefore lowers his culpability for the offence (*Soo Cheow Wee* at [51]). On the other hand, that same mental condition may render the offender a danger to society or himself, thereby engaging the need for prevention. The tension between these "contradictory sentencing objectives" (*Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 at [1]) was recognised by the High Court of Australia in *Veen v The Queen (No 2)* (1988) 164 CLR 465 (at 476–477) in the following remarks, which were cited with approval by the Court of Appeal in *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 (at [70]):

> … And so a mental abnormality which makes an offender a danger to society when he is at large but which diminishes his moral culpability for a particular crime is a factor which has two countervailing effects: one which tends towards a longer custodial sentence, the other towards a shorter.

59 To give an example, this tension arose in the case of *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295. There, the offender had killed his wife in a brutal and violent manner while experiencing a brief psychotic episode and was convicted of an offence of culpable homicide not amounting to murder. The Court of Appeal accepted that the offender's psychosis had severely impacted his thoughts and actions at the time of the offence (at [63]), with the result that his culpability was "very low" (at [75]). Despite this, the court considered that

it was "clearly in the public interest" for the offender to remain in prison for a longer duration "to try to achieve the twin objectives of rehabilitation and prevention (resulting in the protection of others) in the best way possible" (at [95]). The offender's sentence was therefore enhanced from two to six years' imprisonment.

60 Turning from the sentencing process, we now consider whether the court should consider the accused person's mental condition in determining the NIP. It is useful at the outset to distinguish three situations. The first situation concerns an accused person who was suffering from a mental condition at the time of the offence from which he has since recovered. This situation falls outside the scope of the fitness to plead regime and is therefore not of present concern. Assuming that the accused person is otherwise capable of making his defence, he will simply be convicted of and sentenced for the offence in the ordinary way, with his mental condition potentially a mitigating consideration in the sentencing process. No determination of the NIP by the court will be necessary.

61 The second situation pertains to an accused person who was not suffering from any mental condition at the time of the offence, but who has subsequently developed a mental condition in consequence of which he is now incapable of making his defence. This situation is also not our focus because the accused person's mental condition cannot, in any event, have any impact on the determination of the NIP. Having arisen subsequently, the accused person's mental condition obviously cannot lower his culpability for the offence. Nor can it legitimately engage the need for prevention *as a relevant consideration in the determination of the NIP*, even if now renders him a danger to society or himself. This is for the simple reason that that fact was absent at the time of the offence in respect of which the NIP is being determined. This must be correct

as a matter of principle, considering that an offender's sentence similarly cannot be enhanced by reason of a mental condition arising only afterwards. In our view, any need for prevention in this situation will have to be given effect to under other statutory regimes, such as the MHCTA.

62 The third situation concerns an accused person who is incapable of making his defence on account of a mental condition from which he was also suffering at the time of the offence. This situation is the focus of our present concern. Here, the accused person's mental condition may have the "potentially paradoxical effect" described earlier (see [58] above) if it is admitted as a relevant consideration in the determination of the NIP. The questions for our consideration are whether and how the court should take account of the accused person's mental condition under these circumstances.

63 In our judgment, bearing in mind the limited nature of the facts and evidence before it, the court should adopt a practical approach. By this, we mean that the court should only consider the accused person's mental condition if it satisfies the high threshold of clearly having a material bearing on the NIP. This will be the case where it significantly lowers his culpability and thus militates in favour of a shorter NIP or greatly engages the need for prevention and thus militates in favour of a longer NIP. Where the accused person's mental condition simultaneously pulls in both directions, the tension should be resolved in favour of the need for prevention, with the result that the NIP should ultimately be lengthened. This comports with our conclusion that prevention is the primary consideration in the determination of the NIP (see [53] above). Our view that the NIP is, unlike an ordinary sentence, not concerned with punishment (see [45] above) also explains why the accused person's level of culpability is ultimately a matter of secondary importance compared to the need for prevention.

64 However, where the high threshold described above is not satisfied, the court should ignore the accused person's mental condition when determining the NIP. This is because the court will ordinarily lack the facts and evidence necessary to determine whether and how the NIP should be affected by that mental condition. It has been observed, in the context of sentencing, that the court should carefully consider the following specific facts in determining the impact an offender's mental condition would have on the appropriate sentence: (a) the existence, nature and severity of the mental condition; (b) whether a causal link can be established between the condition and the commission of the offence; (c) the extent to which the offender had insight into his mental condition and its effects; and (d) whether the overall circumstances are such as to diminish the offender's culpability. Where the offender suffers from multiple mental conditions, it will also be necessary to examine the interaction between the mental conditions and, in particular, the synergistic manner in which different mental conditions may come together and operate on the offender's mind (*Soo Cheow Wee* at [51]). Further, in determining which of the four sentencing considerations of deterrence, prevention, retribution and rehabilitation should take greater weight, the court should have regard to the following factors: (a) the offender's attitude in seeking treatment and compliance with the treatment programme; (b) whether the offender is recalcitrant; (c) whether the offender poses a threat to the public; and (d) whether the offender is guilty of a particularly serious crime (*Soo Cheow Wee* at [67]). However, where a court is determining the NIP, it will typically have insufficient facts and evidence to come to a firm view either way on many of these essential issues. Accordingly, unless the accused person's mental condition can be said to clearly have a material bearing on the NIP, we are of the view that it should be left out of account.

65 However, we do not go further to endorse A/Prof Yoong's position that the accused person's mental condition should always be excluded from consideration. In the clear instances which we have discussed above (see [63] above), considerations of fairness to the accused person and the protection of society require an appropriate regard for the accused person's mental condition. A/Prof Yoong referred us to the approach adopted in several Australian jurisdictions. However, we did not derive significant assistance from this comparative exercise because the relevant statutory provisions were framed in different terms from the fitness to plead regime as found in the CPC. For example, s 269O(2) of South Australia's Criminal Law Consolidation Act 1935 (SA) provides:

> If a court makes a supervision order, the court must fix a term (a limiting term) equivalent to the period of imprisonment or supervision (or the aggregate period of imprisonment and supervision) that would, in the court's opinion, have been appropriate if the defendant had been convicted of the offence of which the objective elements have been established[1].
>
> …
>
> Note—
>
> 1 The court should fix a limiting term by reference to the sentence that would have been imposed if the defendant had been found guilty of the relevant offence and *without taking account of the defendant's mental impairment.*
>
> [emphasis added]

As the parties observed,[33] and as A/Prof Yoong himself accepted,[34] the fitness to plead regime set out in the CPC is clearly different because it does not expressly require the accused person's mental condition to be excluded from consideration.

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33 AWS at paras 22–23; RWS at para 58.

34 YICWS at para 47.

A framework for the determination of the NIP

66 Drawing together the threads of the above discussion, we now set out a framework for the determination of the NIP. This framework is modelled upon the approach proposed by the Prosecution (see [20] above), with which we broadly agreed. However, consistent with our view that the court should ignore the accused person's mental condition unless it clearly has a material bearing on the NIP (see [64] above), we consider that the NIP should be determined in the first instance without having regard to the accused person's mental condition. After arriving in this way at a provisional determination, the court should then consider, by way of a further step in the analysis, whether any adjustments are warranted on account of the accused person's mental condition. To do so, the court should consider whether the accused person's mental condition meets the high threshold for admission as a consideration and, if so, whether it warrants an upward or a downward adjustment of the provisional NIP. It is also at this juncture that the court should identify the relevant considerations, such as prevention, and ensure that the NIP in the final analysis appropriately reflects these considerations. Thus, to be clear, the first three steps of the following four-step framework should be undertaken without recourse to the accused person's mental condition, which will only be admitted for consideration, if at all, under the fourth step.

67 First, as required under ss 249(10)(*a*) and 249(10)(*a*)(ii) of the CPC, the court should assume that the accused person committed and has been convicted of every offence with which he is charged.

68 Second, the court should determine the individual sentences that would have been imposed on the accused person for each of his offences. This should largely be approached as an ordinary exercise in sentencing, that is, having

regard to the offence-specific and offender-specific factors as well as any relevant sentencing frameworks and precedents. However, the court should not grant any discount on account of a plea of guilt but should proceed on the basis that the accused person was convicted after claiming trial. This is only logical because it cannot be assumed that the accused person, who is incapable of indicating his position, would have pleaded guilty to the offences.

69 Third, the court should determine the total period of imprisonment that would have been imposed on the accused person. It should first consider "the possible combinations of consecutive sentences and concurrent sentences that might be imposed on the accused" (see s 249(10)(*a*)(i) of the CPC). This should be decided by reference to s 307(1) of the CPC, the one-transaction rule, and the general rule of consecutive sentences for unrelated offences (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [52]). The court should then ascertain that the ensuing total period of imprisonment is "just and appropriate, taking into account the totality of the criminal conduct of the accused" (see s 249(10)(*a*)(ii) of the CPC). This requires an application of both limbs of the totality principle, which respectively examine: (i) whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed; and (ii) whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [54] and [57]). Suitable adjustments to the total period of imprisonment should then be made if necessary.

70 Fourth, the court should consider whether the above analysis is affected by a mental condition which satisfies the high threshold of clearly having a material bearing on the NIP. To repeat, in such cases, the accused person's mental condition may significantly lower his culpability and militate in favour

of a shorter NIP or greatly engage the need for prevention and militate in favour of a longer NIP. Where the mental condition pulls simultaneously in both directions, the need for prevention should prevail, with the result that the NIP should ultimately be lengthened.

The present application for criminal revision

71 We now turn to the present application. Section 249(11) of the CPC provides that the determination of the NIP by a court cannot be appealed against but may, if the court is a State Court, be revised under Division 3 of Part 20. Accordingly, the present application was framed as an application for criminal revision under s 400 of the CPC.

72 The law is clear that a high threshold must be met before the court will exercise its revisionary jurisdiction. In *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064, the General Division of the High Court summarised the applicable principles as follows (at [14]–[15]):

> 14 It is settled law that the revisionary jurisdiction of the court is to be sparingly exercised. Typically, this will require a demonstration not only that there has been some error but also that material and serious injustice has been occasioned as a result. In *Knight Glenn Jeyasingam v PP* [1998] 3 SLR(R) 196, the High Court said as follows (at [19]):
>
> > … The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice.
>
> 15 It has also been observed that the threshold of 'serious injustice' will only be crossed if there is 'something palpably wrong in the decision that strikes at its basis as an exercise of judicial power' by the court below (*Rajendar Prasad Rai v PP*

> [2017] 4 SLR 333 ('*Rajendar*') at [24], citing *Ang Poh Chuan v PP* [1995] 3 SLR(R) 929 at [17]).

73 In the present case, the DJ did not exactly apply the framework we have prescribed above, which she did not have the benefit of at the time of the proceedings below. Thus, instead of first making a provisional determination of the applicant's NIP without regard to his mental condition, she went about determining his NIP with his mental condition consistently in view. Nonetheless, the applicant did not take issue with much of the DJ's analysis. He raised no criticism, for example, against her identification of the offence-specific factors, her application of the relevant sentencing frameworks and precedents or her assessment that the imprisonment terms for the 1st and 4th charges would have been ordered to run consecutively. Thus, viewed in terms of the framework we have prescribed, the first three steps were not in issue in the present case.

74 In relation to the fourth step, we were satisfied that the DJ was correct to take account of the applicant's mental condition. She was also correct to conclude, on this basis, that the need for prevention was the primary consideration warranting a longer NIP (see GD at [87]). In the first place, the applicant's mental condition met the threshold of clearly having a material bearing on the NIP. On the one hand, it significantly lowered his culpability because it diminished his ability to appreciate the wrongfulness of his conduct and reduced his capacity to exercise self-control and restraint. On the other hand, it greatly engaged the need for prevention in the interest of public protection. The medical evidence clearly indicated that there was a contributory link between the applicant's mental condition and his offences, which were committed against multiple victims over two separate days. As the DJ noted, this condition had also resulted in at least some of the applicant's antecedents

(see GD at [17]). Significantly, it did not appear to be amenable or responsive to medical intervention. Bearing in mind the vulnerability of the applicant's likely victims, being elderly male persons in wheelchairs, the need for prevention was clearly enlivened in all the circumstances. For the reasons we have provided earlier (see [63] above), this need for prevention assumed primacy over the applicant's reduced culpability and amply justified a longer NIP.

75 The applicant also submitted that the DJ was wrongly influenced by the estimated length of time required for his recovery. We rejected this submission, which rested upon a misapprehension of the DJ's reasoning. As the Prosecution observed,[35] the DJ had in fact accepted Dr Soh's opinion that treatment was unlikely to effect any meaningful change in the applicant's mental condition (see GD at [87]). Contrary to his submission, she did not calibrate the NIP by reference to the likely duration of time required for his recovery.

76 In the final analysis, we were not satisfied that the DJ's determination of the NIP could be said to have been wrong, much less so "palpably wrong" as to surmount the high threshold of "serious injustice" required for the exercise of the court's revisionary jurisdiction.

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[35] RWS at para 101.

Conclusion

77 For the above reasons, we dismissed the application for criminal revision. We record our appreciation to A/Prof Yoong for his submissions, which were of great assistance to us.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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